Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1997

LYNN TRUMAN CRAWFORD,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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68 pp

QUESTIONS PRESENTED

1) WHETHER THE COURT OF APPEAL ERRED IN FINDING 18 U.S.C. §228 (CHILD SUPPORT RECOVERY ACT) CONSTITUTIONAL AND IN DOING SO VIOLATED THE SPIRIT OF UNITED STATES VS. LOPEZ, 115 S.Ct. 1624(1995)?

2) WHETHER THE COURT OF APPEAL ERRED IN FAILING TO FIND THAT 18 U.S.C. §228 VIOLATED THE TENTH AMENDMENT PRINCIPLES OF FEDERALISM AND COMITY AND SPECIFICALLY THE "DOMESTIC RELATIONS EXCEPTION"?

3) DID THE COURT OF APPEAL ERR IN FINDING 18 U.S.C. §228 CONSTITUTIONAL AND IN CONFORMANCE WITH ARTICLE 1 §9 CL. 3 OF THE UNITED STATES CONSTITUTION, NAMELY: THE EX POST FACTO LAW?

4) WHETHER THE COURT OF APPEAL ERRED IN FINDING THAT THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI WAS THE PROPER VENUE OVER THE PERSON OF THE ACCUSED, LYNN TRUMAN CRAWFORD?

PARTIES TO THE PROCEEDING

The caption of the case in this court contains the names of all parties to the proceedings in the United States Court of Appeal, Eighth Circuit.

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHT CIRCUIT

The petitioner, LYNN TRUMAN CRAWFORD, respectfully requests that a writ of certiorari be issued to review the judgment and opinion of the Eighth Circuit Court of Appeals entered in this proceeding on June 23, 1997.

OPINIONS BELOW

This case originated in the United States District Court for the Eastern District of Missouri, which convicted petitioner, Lynn Truman Crawford (*United States of America v. Crawford).* A copy of the Judgment of Conviction is attached as (App. 32 through 39). The Eighth Circuit Court of Appeals affirmed the decision of the District Court. *United States v. Crawford* ____ F. 3rd _____, (8th Cir., 1997). A copy of the opinion is attached as (App. 1 through 27).

JURISDICTION

Mr. Crawford was charged with failure to pay child support in violation of 18 U.S.C. §228 (Child Support Recovery Act or CSRA). The District Court jurisdiction was alleged under 18 U.S.C. §3231.

The Magistrate Judge denied Mr. Crawford's Motion to Dismiss the indictment and the written reasons of the Magistrate Judge were accepted and adopted by the Honorable George F. Gunn, Jr., District Judge. Mr. Crawford's case was tried on the

merits on June 5, 1996 as a bench trial before the Honorable George F. Gunn, Jr. and at the conclusion thereof the accused was found guilty. Judge Gunn gave no written or oral reasons for judgment. The accused, Lynn Truman Crawford, waived the pre-sentence report and reported on July 2, 1996 for sentencing. The Honorable George F. Gunn, Jr., sentenced the accused, Lynn Truman Crawford, to imprisonment for six (6) months with a $25.00 assessment to be paid immediately, and restitution of $91,547.14 in back due child support to be paid within five (5) years of his release from incarceration, plus post judgment interest at the rate of 5.89%, compounded annually. On July 2, 1996, the accused filed notice to appeal the case to the Eighth Circuit. A copy of same is attached as (App. 28 through 31).

This Petition for Writ of Certiorari is filed timely pursuant to Rules 13 and 29, Rules of the Supreme Court of the United States, directed to the Eighth Circuit Court of Appeals decision of June 23, 1997. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §§ 1254 and 2101(c).

CONSTITUTIONAL PROVISIONS AND STATUTES

The Child Support Recovery Act, 18 U.S.C.

§ 228, provides:

> **(a) Offense.** Whoever willfully fails to pay a past due support obligation with respect to a child who resides in another State shall be punished as provided in subsection (b).

(b) Punishment. The punishment for an offense under this section is -- (1) in the case of a first offense under this section, a fine under this title, imprisonment for not more than 6 months, or both; and (2) in any other case, a fine under this title, imprisonment for not more than 2 years, or both.

(c) Restitution. Upon a conviction under this section, the court shall order restitution under section 3663 in an amount equal to the past due support obligation as it exists at the time of sentencing.

(d) Definitions. As used in this section -- (1) the term "past due support obligation" means any amount -- (A) determined under a court order or an order of an administrative process pursuant to the law of a State to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living; and (B) that has remained unpaid for a period longer than one year, or is greater than $5,000; and (2) the term "State" includes the District of Columbia, and any other possession or territory of the United States.

United States Constitution, Article 1, §8, Cl. 3 Power of Congress to Regulate Commerce.

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

United States Constitution-Amendment Ten

Powers reserved to states or people.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

United States Constitution Article 1, §9, Clause 3.

§9, Cl. 3 Bill of attainder-Ex post facto laws.

No Bill of Attainder or ex post facto law shall be passed.

United States Constitution, Article 3, §2, Clause 3:

The Trial Law Crime, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crime shall have been committed; when not committed within the state, the trial shall be at such place or places as Congress may by law have directed.

United States Constitution Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.

Rule 18 of the Federal Rules of Criminal Procedure

Except as otherwise permitted by statute or by these rules the prosecution shall be had

> in a district in which the offense was committed. The Court shall fix the place of trial within the district with due regard to the convenience of the accused and the witnesses and the prompt administration of justice.

STATEMENT OF THE CASE

The facts of this case are not in dispute. The Court of Appeals on Page 2 of its opinion succinctly and correctly sets forth the essential facts. Crawford married his wife on September 1, 1984 in the State of Missouri. Thereafter the couple moved to Texas and two daughters were born while the couple lived in Texas. The Crawfords separated in February of 1988 and Mrs. Crawford retained custody of the two children. On March 23, 1988, the Texas Court issued an order requiring Crawford to make payments of $1,000 per month as child support to be paid through the Dallas County Child Support Office in Dallas, Texas. Crawford made the monthly payments until November, 1988. Approximately a year thereafter, the Texas State Court found Crawford to owe over $12,000 in back child support and held him in contempt. In November of 1990, the Texas State Court issued a final divorce decree and continued the monthly child support orders. During the process of the separation and divorce, Mrs. Crawford and the two children moved from Texas to Missouri, where they have resided ever since.

From the time of the couple's separation until Crawford's arrest in February of 1996, Crawford continued to reside in Texas and Louisiana and had no contacts with the State of Missouri. The Texas child support order was never amended nor was it ever assigned to the State of Missouri. The Texas child support order has not been modified, the Texas child support order has never been made executory in the State of Missouri, and there has been no civil judgment obtained in the State of Missouri. Mr. Crawford has never been in the State of Missouri during the indictment period, and has always maintained a Texas and Louisiana abode. His addresses were never hidden, nor his whereabouts unknown. Crawford has never fled his Texas or Louisiana abodes to avoid payment. He has never used Missouri mail or wire service, Missouri interstate highways, railways, or air carriers. On February 15, 1996, Crawford was indicted in the Eastern District of Missouri on one (1) count of violating the CSRA and he was ultimately arrested in Louisiana. On the day of his arrest, Crawford filed in the Western District of Louisiana Motions to Dismiss the indictment arguing the unconstitutionality of CSRA under the commerce clause and the Tenth Amendment, along with violations of the ex post facto clause. Crawford also contested the personal jurisdiction and/or venue of the State of Missouri. All motions were transferred to the Eastern District of Missouri. The Magistrate Judge held an evidentiary hearing and

recommended denial of Crawford's motion to dismiss the indictment. (Report and Recommendation dated April 26, 1996). The District Court adopted the Magistrate Judge's report and recommendation and denied the motion by order dated May 30, 1996. The case proceeded to trial. The District Court found Crawford guilty and was he was sentenced to six (6) months imprisonment, ordered to pay a special assessment of $25.00 and restitution in the amount of $91,547.14, plus interest with judgment being rendered on July 2, 1996. An appeal was taken to the Eighth Circuit and by judgment entered on June 23, 1997, the ruling and conviction of the District Court were affirmed.

SUMMARY OF ARGUMENT ON QUESTION 1

WHETHER THE COURT OF APPEAL ERRED IN FINDING 18 U.S.C. §228 (CHILD SUPPORT RECOVERY ACT) CONSTITUTIONAL AND IN DOING SO VIOLATED THE SPIRIT OF UNITED STATES VS. LOPEZ, 115 S.Ct. 1624(1995)?

The CSRA should be declared an unconstitutional exercise of congressional power under the commerce clause. According to this Court's decision in *Lopez*, the commerce clause authorizes three categories of federal legislation: (1) laws regulating the channels of interstate commerce, (2) laws regulating the instrumentalities of interstate commerce, and (3) laws regulating activities that substantially affect intrastate commerce. The Honorable Eighth Circuit declared the CSRA

constitutional under the second and third analysis. Crawford submits that the CSRA fits within none of the three categories. There exist civil means by which to address the collection of child support. Forty-eight states have passed the Uniform Reciprocal Enforcement of Support Act (URESA), designed to address the extradition of defendants who have failed to pay child support. The obligation to pay child support is a personal/civil obligation arising from a state court proceeding incidental to divorce. It is in no sense commercial in nature nor does it have any ties to commerce or any sort of economic enterprise. The only nexus to interstate commerce in this case is the fact that the parties reside in different states. This is not sufficient to confer federal jurisdiction and should not be held synonymous with "interstate commerce". The legislative history of CSRA does not provide a rational basis to support the conclusion that failing to pay child support substantially effects interstate commerce. In fact, the Legislative history clearly indicates that the CSRA reaches beyond the conduct Congress intended to criminalize. If the failure to pay child support to a domiciliary parent who moved to another state makes the non-domiciliary parent subject to a federal crime, then any limitation on the federal regulation of family law will be removed. In effect, this will subject the federal courts to jurisdiction over all actions incidental to divorce.

ARGUMENT ON QUESTION 1

Article 1, §8, Cl. 3 of the United States Constitution delegates to Congress the power "to regulate commerce with foreign nations, and among the several states and with the Indian tribes." The Supreme Court has recently addressed the issue before this Court in the case of *United States vs. Lopez*, 115 S.Ct. 1624 (1995) LOPEZ. The Court in *Lopez* gives a detailed formula and analysis for Courts to follow in determining whether or not Congress has exceeded its Legislative authority under the Commerce Clause. The Constitution creates a Federal Government of enumerated powers, leaving the bulk of governing authority to the States as recognized in *Lopez*. In limiting the scope of the Federal Government, the Constitution creates, "a healthy balance of power between the states and the Federal Government" which removes and/or reduces "the risk of tyranny and abuse from either front." *Gregory vs. Ashcroft*, 501 U.S. 452, 458 (1991).

The Supreme Court in *Lopez* undertook an extensive analysis of the history of the Commerce Clause and then announced a three-part standard to determine whether a Federal Statute is constitutional under the Commerce Clause. The three part standard is as follows:

1. That Congress may regulate the use of the channels of interstate commerce.

2. Congress is empowered to regulate and protect the

instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from the intrastate activities.

3. Congress may regulate those activities having a substantial relation to interstate commerce, i.e. those activities that substantially affect interstate commerce.

After the *Lopez* decision, the issue of CSRA has been challenged in numerous districts, all of which have now ultimately held the statute constitutional. This Court has even denied writs in some of the cases. The original nine cases are:

U.S. vs. Schroeder, 894 F.Supp. 360 (D. Arizona, 1995),
U.S. vs. Mussari, 894 F.Supp. 1360 (D. Arizona, 1995),
U.S. vs. Bailey, 115 F.3d 1222 (5th Cir., 1997),
U.S. vs. Parker, 911 F.Supp. 830 (E.D. of Pa., 1995),
U.S. vs. Hampshire, 892 F.Supp. 1327 (D. Kansas, 1995),
U.S. vs. Murphy, 117 F.3d 137 (4th Cir., 1997),
U.S. vs. Hopper, 899 F.Supp. 389 (S.D. Indiana, 1995),
U.S. vs. Sage, 906 F.Supp. 84 (D. Conn., 1995), and
U.S. vs. Kegel, 916 F.Supp. 1233 (D. Florida, 1996).

Crawford humbly submits that this Honorable Court should review this statute on the basis of the legal analysis as set forth in *Lopez*. It is easy in a case such as this to confuse legal analysis with social analysis. Under the logic and holding of *Lopez*, collection of failure to pay a child support obligation can hardly be deemed an activity fitting within the three prong test

of *Lopez*. By its own nature, CSRA is but a criminal statute having nothing to do with commerce or any sort of economic enterprise however broadly one might define those terms. The way the statute is written would apply to diverse citizenship, not interstate commerce. The lower courts have mistaken "interstate relationship" and "residence" as being synopsis with interstate commerce. The only nexus for anything "interstate" in this case would be the fact that the parties reside in different states.

In the case of *United States of America v. Bailey*, 115 F.3rd 1222, (5th Cir., 1997), the Court in a two to one decision found CSRA to be constitutional overturning the Texas District Court that had declared the statute unconstitutional. The case was decided by a two to one decision and an application for rehearing is presently pending. Judge Smith in his dissent, succinctly and correctly sets forth the fallacy of the majority decision in stating at page 1233:

> "The lessons of *Lopez* are lost, however, in the instant case. Rather than rigorously enforcing the limitations on federal power, as *Lopez* commands, the panel majority upholds the constitutionality of a statute that contains no reference to interstate commerce, regulates an activity that is not commercial, and invades the field of family law, a traditional area of exclusive state sovereignty. Therefore, I conclude that the Child Support Recovery Act ('CSRA') flouts the limitations on the Commerce Clause,

> flies in the face of *Lopez*, and threatens to 'obliterate the distinction between what is national and what is local and create a completely centralized government.'" (Citation omitted).

Judge Smith goes on to conclude that child support payments are outside the "course of business and cannot be defined as commerce."

What Circuit Courts are doing on CSRA is opening the door for federal regulation under the commerce clause by allowing Congress to regulate any and all activities so long as we have diversity of citizenship. To follow the majority rulings in the CSRA cases would render all interstate activities subject to federal legislation.

Judge Smith in his dissent goes on to state that:

> "CSRA is redolent of a police power, not a responsible and reflective exercise of legislative authority appropriate to a government of enumerated powers. Accordingly, the CSRA is not a constitutional exercise of the commerce power. To uphold the CSRA, 'a purely criminal law, with no nexus to interstate commerce, whose enforcement intrudes upon traditional police powers of the states, would convert the commerce power into a reserved 'general federal police power'". (Citation omitted).
>
> The CSRA contained no express jurisdictional nexus requirement, regulates an activity that is not commercial, and invades the field of family law, a traditional

> area of exclusive state sovereignty. Therefore, with the revival of federalism as a constitutional value in *Lopez*, I conclude that the statute cannot survive constitutional scrutiny."

SUMMARY OF ARGUMENT ON QUESTION 2

WHETHER THE COURT OF APPEAL ERRED IN FAILING TO FIND THAT 18 U.S.C. §228 VIOLATED THE TENTH AMENDMENT PRINCIPLES OF FEDERALISM AND COMITY AND SPECIFICALLY THE "DOMESTIC RELATIONS EXCEPTION"?

In addition to exceeding congress's commerce power, CSRA unequivocally infringes on state sovereignty thus violating the principles of federalism and comity. The Tenth Amendment clearly shows the intent of the founders of the Constitution that the states retain substantial sovereign authority under our constitutional system. The basis of this federal indictment stems from a Texas state judgment, thus clearly interfering with Texas insofar as enforcement is concerned. Federal courts have traditionally abstained from any action involving family law as a matter of judicial economy, judicial expertise and because of the special proficiency developed by state courts over the past century in handling these issues.

In using the notions of federalism and comity pursuant to the abstention doctrine and the "domestic relations exception" to federal diversity this court should defer to state jurisdiction. To do otherwise, would open the door to abatement motions

and counter claims for change of custody or defense based on changed circumstances.

ARGUMENT ON QUESTION 2

As James Madison put it:

> "The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous indefinite... The powers reserved to the several states will extend to all of the objects which, in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the internal order, improvement, and prosperity of the state."

CSRA should be considered doubly invasive of states' rights under *Lopez*, plus it involves the enforcement of the criminal law which is based upon family law origins. This Honorable Court in *Lopez* repeatedly made it clear: Family law is out of bounds. The adamant stance, logic and reasoning of the *Lopez* Court should be adhered to in Mr. Crawford's case. *Lopez* doesn't insinuate nor suggest, but states with great clarity for Congress not to regulate in the areas of family law, criminal law enforcement, and education.

The Eighth Circuit attempts to rationalize and justify CSRA's existence through a social service policy or assistance as opposed to regulation. This fine line distinction has certainly not been spelled out in *Lopez* or any of the other previous cases such as *Ankenbrandt v. Richards*, 504 U.S. 689 (1992). See

also cases of *Overman v. United States*, 563 F.2d 1287 (8th Cir., 1977) and *Lannan v. Maul*, 979 F.2d 627 (8th Cir., 1992). This Court accordingly, in the spirit of *Lopez* should grant the writ and ultimately dismiss against Crawford.

ARGUMENT SUMMARY ON QUESTION 3

The Court erred in failing to find 18 U.S.C. §228 in violation of Article 1 §9 Cl. 3, United States Constitution, namely: the Ex Post Facto law.

The Ex Post Facto clause is based on a principle fundamental to our concept of liberty which is: the notion that persons have a right to fair warning of that conduct which will give rise to criminal penalties. The legislative history of the CSRA corroborates Crawford's contentions that the CSRA applies only to support orders entered after the passage of the Act. (October 25, 1992).

ARGUMENT ON QUESTION 3

The Supreme Court in the case of *Bouie vs. City of Columbia*, 378 U.S. 347 (1964) has defined an Ex post facto law as "One that makes an action done before the passing of the law and which was innocent when done, criminal; and punishes such action, or that aggravates a crime, or makes it greater than it was when committed." Cited in *United States vs. Brown*, 555 F.2d 407 (5th Cir., 1977, page 417). Mr. Crawford, on November 5, 1988, was ordered by the 255th Judicial District Court in Dallas County, Texas to pay to the state of Texas for

the benefit of his children, the sum of $1,000 a month as child support. Crawford further submits that the effective date of the CSRA is October 25, 1992. Accordingly, to charge him with a violation of CSRA by failing to pay child support from October 31, 1992 and continuing through February 14, 1996 is a violation of the Ex post Facto Clause of the United States Constitution and the indictment should have been dismissed. As stated in *Brown* at page 419, "the Ex post facto clause is a limitation upon the powers of the Legislature, ..." (Citations omitted). The Court in *Brown* does go on to say "But the principle on which the clause is based - the notion that persons have a right to fair warning of that conduct which will give rise to criminal penalties - is fundamental to our concept of constitutional liberty." (Citations omitted). As further proof of this premise one must look to the Legislative history, namely at page 24 of the House hearing on HR1241. In responding to a question by Representative Smith, a cosponsor of the CSRA bill about what would be the practical benefits if the bill passed, Representative Henry Hyde, sponsor of the Legislation, responded that if the bill passed, a Judge in entering the divorce decree would say to the person upon whom the child support obligation was being imposed, that if the person crosses the state line to avoid the support obligation, the FBI would pursue them, and further that the payoff would be a therapeutic deterrent based on the Courts reminding the husband that he

will be on the FBI records if he absconds.

We ask this Honorable Court to imagine a mental image of a Judge in a state divorce case entering the support order and simultaneously informing the parent of FBI involvement if he crosses the state line to avoid payment. If this is what the author, Mr. Hyde intended, then it would appear clearly the legislative intent to have the CSRA apply only to those support orders entered after the passage of the Act. It should also be argued that testimony from the sponsor of the bill would indicate that the CSRA applies only to those cases where the Judge in the divorce case actually does inform the parent of possible FBI involvement; there certainly could be no therapeutic deterrent without actually informing the parent of the possible consequences. This Court should conclude that the CSRA applied only to Court decrees rendered after October 25, 1992.

In the alternative, Crawford respectively submits that the Court cannot go behind the date of the statute, namely: October 25, 1992 for determination of guilt or for purposes of ordering restitution. This matter was basically stipulated by the Government. See Trial Transcript, page 11, lines 13-19; and pages 31-35. How can one order restitution for something a person isn't charged with? Crawford is charged with failing to pay child support from October 31, 1992 through February 14, 1996. The Government is bound by these dates. The evidence enlarging these dates was properly objected to by counsel at

the trial of this matter and under any and all circumstances, Mr. Crawford should be ordered to pay no more than $40,000 in restitution.

ARGUMENT SUMMARY ON QUESTION 4

The Court of Appeal erred in failing to dismiss the indictment on Motion of Improper Venue. The only basis for jurisdiction/venue asserted by the Government over Mr. Crawford in the Eastern District of Missouri is the fact that his ex-wife, Mona Tague, lives in the State of Missouri. Clearly there lacks sufficient evidence to prove that Mr. Crawford was ever ordered to do anything by the State of Missouri or presented himself in the State of Missouri during the time period set forth in the indictment.

ARGUMENT ON QUESTION 4

Mr. and Mrs. Crawford lived in Texas as man and wife until their separation. Mr. & Mrs. Crawford were both employed in the State of Texas until their separation. Two children of the marriage were born in Texas. The separation of the marriage and the ultimate divorce between the Crawfords occurred in Texas. The divorce, custody and support proceedings were filed and litigated in the 255th Judicial District Court for the State of Texas. The judgment and/or judgments of divorce, custody, support and past due support was rendered in the 255th Judicial District Court for the State of Texas. The support judgment rendered against Mr. Crawford condemned him to pay

to the State of Texas, not to the children, or Mrs. Crawford, or the State of Missouri, the sum of $1000 per month. (Emphasis ours) The custodial parent, Mrs. Crawford, along with the children left the State of Texas very soon after the separation. The child support order has not been modified and there has been no civil judgment obtained in Missouri, nor has Mrs. Crawford or the State of Missouri, received an assignment of the Texas judgment. Mr. Crawford has never been in the State of Missouri during the indictment period. Mr. Crawford has maintained a Texas abode and a Louisiana abode, as well as Texas and Louisiana post office boxes. His addresses have not been hidden and he has never fled the above addresses to avoid payment. In fact, Crawford's present addresses are the same addresses contained in the judgment rendered in the 255th Judicial District for the State of Texas. Mr. Crawford has never used Missouri mail or wire services for payment of child support obligations. Mr. Crawford has never used interstate highways, railways, or air carriers in the State of Missouri to deliver child support payments. In conclusion, Mr. Crawford simply has had no contact with the State of Missouri or anyone in the State of Missouri. Mr. Crawford does not owe a child in the State of Missouri. The Court Order used by the Government as the basis for pending charges condemns Mr. Crawford to pay child support to the "State of Texas". Mr. Crawford began nothing in the State of Missouri, has continued

nothing in the State of Missouri, and has completed nothing in the State of Missouri; therefore, nothing said in 18 U.S.C. §3237 gives the Honorable Federal Court in the Eastern District of Missouri, jurisdiction in this case over Mr. Crawford. The case of *Travis vs. United States*, 364 U.S. 631 (1961) involved the prosecution of a union officer for filing false non-communist affidavits. The issue in this case was whether Mr. Davis could be tried in Colorado where he deposited the affidavit in the mail or be tried in the District of Columbia where he was required to file the affidavit. The Supreme Court held that the appropriate jurisdiction and venue was the District of Columbia and on page 362 of the opinion, expressly stated:

> "When a place is explicitly designated where a paper must be filed, a prosecution for failure to file lies only at that place. ..."

Mr. Crawford was not ordered to do anything by Missouri or in Missouri. Mr. Crawford was specifically ordered to pay child support in the amount of $1000 per month, payable through the Dallas County Child Support Office, Room 11, Old Red Courthouse, Dallas, Texas 75201. Mr. Crawford had no nexus with the State of Missouri and the District Court should have dismissed the charges and released him. Not only is there no sufficiency of evidence to establish personal jurisdiction and venue in the Missouri Court, there is no evidence.

Recently the Fourth Circuit Court of Appeals in *U.S. v. Murphy*, 117 F.3d 137 (4th Cir., 1997) reversed the District

Court decision dismissing Murphy's conviction under the CSRA for improper venue. Admittedly, the facts in *Murphy* are similar to the facts in Crawford. However, there are distinguishing facts. In *Murphy* the parties were divorced in Oklahoma where Murphy was ordered to pay $100.00 per month child support. Subsequently, Murphy moved to Texas and his wife, Linda Murphy, moved to Roanoke, Virginia. Then, Linda Murphy, through the Roanoke office of the Virginia Department of Social Services, Division of Child Support Enforcement, requested that the State of Texas take action under the Uniform Reciprocal Enforcement Support Act ("URESA"). In July, 1990, the Texas Court found that Murphy owed "the State of Virginia and/or petitioner (Linda Murphy)" past due child support.

Contrary to *Murphy*, there has never been a finding, order or judgment which ordered Crawford to pay any child support to the State of Missouri or stating that Crawford owed anything to the State of Missouri. Clearly, if Missouri had obtained an order or finding similar to the one in *Murphy*, then the Government's argument might have merit. However, that is not the case and to hold otherwise would vitiate the Constitution's safeguard against the unfairness and hardship of facing criminal charges in distant and unexpected locations.

Further, the Court in *Murphy* relies on certain language of the statute, which in their opinion, supports the conclusion that the child's residence is a proper venue for prosecution under 18

U.S.C. §228. We submit that the language "child who resides in another state" was enacted in an effort to federally criminalize the failure to pay child support when the obligor moved interstate in an effort to avoid payment. Clearly, the legislative history does not support the 4th Circuit's position that venue is proper anywhere the child (who is not necessarily the obligee) resides.

Without doubt, Crawford could be prosecuted in Texas or Louisiana because of the fact there exists sufficient nexus between Crawford, those respective states, and the acts which allegedly constitute the underlying basis for indictment. The fact that Crawford can be prosecuted in a state which has absolutely no nexus with him is contrary to the United States Constitution, Article 3, §2, Clause 3 and the Sixth Amendment. Proper venue analysis under the facts of this case create an issue of first impression which this Honorable Court should address and resolve in keeping with the District Court's decision in *Murphy*.

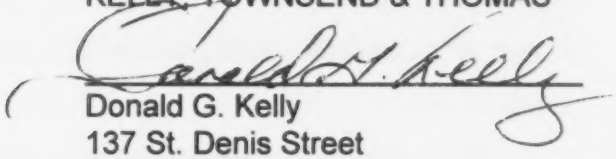
CONCLUSION

For the above stated reasons, this Honorable Court should grant writs, reverse the decision of the Eighth Circuit Court of Appeals and ultimately remand with instructions that the indictments against Crawford be dismissed.

DATED September 10, 1997.

RESPECTFULLY SUBMITTED,

KELLY, TOWNSEND & THOMAS



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United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 96-2808

United States of America,	*	
	*	
Appellee,	*	
	*	
v.	*	Appeal from
	*	the United States
	*	District Court for the
Lynn Truman Crawford,	*	Eastern District of
	*	Missouri
Appellant.	*	
	*	
	*	

Submitted: November 18, 1996

Filed: June 23, 1997

Before McMILLIAN, Circuit Judge, HENLEY, Senior Circuit Judge, and MORRIS SHEPPARD ARNOLD, Circuit Judge.

McMILLIAN, Circuit Judge.

Lynn Truman Crawford appeals from a final judgment entered in the United States District Court[1] for the Eastern District of Missouri, following a bench trial, finding him guilty on one count of violating the Child Support Recovery Act of 1992 (CSRA), 18 U.S.C. § 228, and sentencing him to six months imprisonment and ordering him to pay a special assessment of $25.00 and restitution in the amount of $91,547.14 plus post-judgment interest. United States v. Crawford, No. 4:96CR42 (E.D. Mo. July 2, 1996) (judgment). For reversal, Crawford argues that the district court erred in denying his motion to dismiss the indictment on grounds that: (1) The CSRA exceeds Congress's regulatory powers under the commerce clause; (2) the CSRA violates the Tenth Amendment; (3) his rights under the ex post facto clause have been violated; and (4) venue in the Eastern District of Missouri is improper. In addition, Crawford argues that the evidence at trial was insufficient to support his conviction. For the reasons discussed below, we affirm.

Background

The underlying facts are not in dispute. Crawford, a physician who specializes in emergency medicine, married Mona Tague on September 1, 1984, in the state of Missouri. Shortly thereafter, the couple moved to Texas. While in Texas, they had two daughters, born in 1985 and 1986. The couple separated in

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[1]The Honorable George F. Gunn, Jr., United States District Judge for the Eastern District of Missouri.

February 1988, and Tague retained custody of the two children.

On March 23, 1988, a Texas state court issued a temporary order which required Crawford to make payments of $1,000 per month in child support, to be paid through the Dallas County Child Support Office in Dallas, Texas. Crawford made the monthly payments until November 1988, when he terminated the payments. One year later, in November 1989, the Texas state court found that Crawford owed over $12,000 in child support and held him in contempt. The following year, in November 1990, the Texas state court issued a final divorce decree, which confirmed Crawford's monthly child support obligation.

Meanwhile, Tague and the two children had moved from Texas to Missouri, where they have resided ever since. From the time of the couple's separation until Crawford's arrest in February 1996, Crawford continued to reside in Texas and Louisiana and had no significant contact with the state of Missouri. In that time period, he earned at least $230,000.

On February 15, 1996, Crawford was indicted in the Eastern District of Missouri on one count of violating the CSRA[2] from

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[2]The CSRA provides in pertinent parts:

> Whoever willfully fails to pay a past due support obligation with respect to a child who resides in another State shall be punished as provided in subsection (b)
>
> . . . .
>
> As used in this section--

October 31, 1992, through February 14, 1996.[3] A warrant was issued for his arrest. On February 26, 1996, Crawford was arrested in Louisiana, and his initial appearance was held in United States District Court for the Western District of Louisiana. The same day, Crawford filed in the Western District of Louisiana a motion to dismiss the indictment, arguing, among other things, that the CSRA is unconstitutional under the commerce clause and the Tenth Amendment, that his rights under the ex post facto clause were being violated, and that venue was improper in the Eastern District of Missouri. He also filed a motion to transfer the case from the Eastern District of Missouri to the Western District of Louisiana. On February 28, 1996, following a detention hearing in the Western District of Louisiana, Crawford was ordered detained without bond. The Louisiana district court did not rule on Crawford's pending motions. Thereafter, before the Eastern District of Missouri, Crawford withdrew his motion to transfer the case to the Western District of Louisiana. Crawford's outstanding motion to dismiss the indictment was

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(1) the term "past due support obligation" means any amount--

(A) determined under a court order or an order of an administrative process pursuant to the law of a State to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living; and

(B) that has remain unpaid for a period longer than one year, or is greater than $5,000.

[3]The CSRA became effective on October 25, 1992.

assigned to a magistrate judge[4] in the Eastern District of Missouri for a report and recommendation.

The magistrate judge held an evidentiary hearing and thereafter recommended denial of Crawfords motion to dismiss the indictment. Id. (Apr. 26, 1996) (report and recommendation). The district court adopted the magistrate judge's report and recommendation and, accordingly, denied the motion. Id. (May 30, 1996) (order). The case proceeded to trial. Following a one-day bench trial, the district court found Crawford guilty on one count of violating the CSRA (the only count in the indictment). Crawford was sentenced to six months imprisonment and ordered to pay a special assessment of $25.00 and restitution in the amount of $91,547.14 plus interest.[5] Id. (July 2, 1996) (judgment). This appeal followed.

Discussion

Commerce clause

Crawford first argues that Congress, in enacting the CSRA, exceeded its power "to regulate Commerce ... among the several

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[4]The Honorable Thomas C. Mummert, III, United States Magistrate Judge for the Easetern District of Missouri.

[5]The government apparently made no recommendation regarding the amount of restitution.

States," as granted under the commerce clause of the United States Constitution. U.S. Const. art. I, § 8, cl. 3. Crawford maintains, and we agree, that analysis of this constitutional issue is governed by United States v. Lopez, 514 U.S. 549, ___, 115 S. Ct. 1624, 1629-30 (1995) (Lopez), in which the Supreme Court identified and discussed three broad categories of permissible regulation under Congress's commerce power: (1) regulation of the use of channels of interstate commerce; (2) regulation and protection of the instrumentalities of interstate commerce, or persons or things in interstate commerce; and (3) regulation of activities having a substantial relation to interstate commerce.

Crawford maintains that the CSRA does not fit within any of these categories. Crawford argues that the payment of child support is incidental to divorce and entirely unrelated to interstate commerce. He contends "[t]he only nexus to interstate commerce in this case is the fact that the parties reside in different states"; that, he argues, is "not sufficient to confer federal jurisdiction and should not be held synonymous with 'interstate commerce.'" Brief for Appellant at 7. Crawford additionally argues that the enforcement of the CSRA in the present case is particularly onerous because it was his former wife (the custodial parent), not he, who moved out of state and created the circumstances permitting application of the CSRA. We disagree.

We review questions involving the constitutionality of a federal statute de novo. United-States v. McMasters, 90 F.3d 1394, 1397 (8th Cir. 1996), cert. denied, 117 S. Ct. 718 (1997). Upon de novo review, we conclude that the CSRA is not an unconstitutional exercise of Congress's regulatory powers under the commerce clause. Accord United States v. Johnson, No. 96-4323, 1997 WL 283447, at *2-3 (4th Cir. May 30,1997) (n); (Johnson); United States v. Parker, 108 F.3d 28, 29-31 (3d Cir. 1997) (Parker); United States v. Bongiorno, 106 F.3d 1027, 1030-33 (1st Cir. 1997) (Bongiorno); United States v. Hampshire, 95 F.3d 999, 1001-04 (10th Cir. 1996) (Hampshire), cert. denied, 117 S. Ct. 753 (1997); United States v. Mussari, 95 F.3d 787, 790-91 (9th Cir. 1996) (Mussari), cert. denied., 117 S. Ct. 1567 (1997); United States v. Sage, 92 F.3d 101, 104-07 (2d Cir. 1996) (Sage), cert. denied, 117 S. Ct. 784 (1997). Contrary to Crawford's contentions, the constitutionality of the CSRA under the commerce clause does not rely solely upon the fact that, in each instance, the parent-defendant and the child-victim reside in different states. A payment of Child support on behalf of an out-of-state child is, by definition, a type of transaction in which money must cross state lines and, moreover, the money must change hands outside of a single household. Such payments, or the debts resulting from nonpayment, are things in, or having a substantial relation to, interstate commerce. We therefore conclude that enactment of the CSRA was a constitutional exercise of Congress's commerce power within either the second or the third category of regulations recognized in Lopez. As the

Supreme Court observed in Wickard v. Filburn, 317 U.S. III, 127-28 (1942) (Wickard), although one's contribution to interstate commerce may be "trivial by itself," that will not remove his or her activities from the scope of federal regulation where that contribution, "taken together with that of many others similarly situated, is far from trivial.[6] " Cf. Lopez, 514 U.S. at____, 115 S. Ct. at 1630-33 (holding that the activity being regulated by the Gun Free School Zones Act of 1990 (i.e., knowing possession of a firearm in a school zone) did not substantially affect interstate commerce, even when viewed in the aggregate). Furthermore, payment of child support on behalf of an out-of-state child requires the use of channels of interstate commerce, which renders the CSRA constitutional under the first Lopez category as well. Finally, Congress's power to regulate such activities is not precluded merely where, as here, the child moved away while the parent-defendant remained in the same location at all relevant times. The constitutionality of the CSRA is based upon the relationship between the regulated activity and interstate commerce, irrespective of the fact that the parent-defendant's own performance, or nonperformance, has remained locally confined. e.g., Wickard, 317 U.S. at 125 ("even if appellee's

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[6]For similar reasons, we agree with the magistrate judge's analysis in which he concluded that the CSRA fits within the third Lopez category and therefore does not violate the commerce clause. United States v. Crawford, No. 4:96CR42, slip op. At 6-9 (E.D. Mo. Apr. 26, 1996 (magistrate judge's report and recommendation).

activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce") (quoted in Lopez, 514 U.S. at ____, 115 S. Ct. at 1628).[7] Accordingly, we hold that the district court did not err in denying Crawford's motion to dismiss the indictment on the ground that the CSRA is an unconstitutional exercise of Congress's commerce power.

Tenth Amendment and abstention doctrines

Crawford also contends that the CSRA runs afoul of the Tenth Amendment's declaration that "powers not delegated to the United States by the Constitution, nor prohibited by it to the

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[7]In United States v. Mussari, 95 F.3d 787, 790-91 (9th Cir. 1996), cert. denied, 117 S. Ct. 1567 (1997), the Ninth Circuit rejected a similar hypothetical argument as follows:

> It is objected that the statute could come into play by the child moving our of state rather than the parent doing so. This hypothetical will not support a facial challenge to the statute as it is applied in this case. But if the hypothetical is entertained, it constitutes no objection to the constitutionality of the statute. It doesn't matter whether the interstate character of the transaction is created by the parent or the child. What matters is that an obligation, already imposed by state law, comes to wear an interstate face. Then, and only then, does the CSRA intervene and forbid frustration of the obligation's satisfaction.

States, are reserved to the States respectively, or to the people." U.S. Const. amend. X. Crawford defines this issue as "[w]hether the district court erred in failing to find that [the CSRA] violated the Tenth Amendment principles of federalism and comity pursuant to the 'Younger[8] abstention doctrine' and the 'domestic relations exception.'" Brief for Appellant at 23-24. In other words, he is urging this court either to hold the CSRA unconstitutional under the Tenth Amendment or to abstain from enforcing it based upon principles of federalism and comity because the CSRA interferes with the states' traditional sovereignty over matters involving domestic relations and enforcement of their criminal laws. We decline to do so.

The Tenth Amendment reserves for the states or the people those powers not delegated to the United States by the Constitution. In New York v. United States, 505 U.S. 144, 156 (1992), the Supreme Court explained "[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States." As we have already held, Congress exercised an enumerated power under the commerce clause when it enacted the CSRA. Therefore, upon de novo review, we conclude that the CSRA does not run afoul of the Tenth Amendment. Accord Johnson, 1997 WL 283447, at *3-5; Parker, 108 F.3d at 31; Bongiorno, 106 F.3d at 1033-34; Hampshire, 95 F.3d at 1004; Mussari, 95

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[8]Younger v. Harris, 401 U.S. 37 (1971).

F.3d at 791; Sage, 92 F.3d at 107. Thus, we hold that the district court did not err in denying Crawford's motion to dismiss the indictment on the ground that the CSRA violates the Tenth Amendment.

To the extent Crawford suggests that the CSRA interferes with the states' traditional sovereignty over domestic relations and enforcement of their criminal laws, we agree with the government's counter-argument that the CSRA in no way interferes with state laws or judicial proceedings. The CSRA does not regulate domestic relations but, rather,. serves to assist the states in enforcing their judgments and orders. "The [CSRA] accepts the validity of the State court judgment and the family policies that judgment embodies. It seeks merely to implement those State policies when the parent and the child live in different States and the judgment has been willfully flouted." Sage, 92 F.3d at 107. Moreover, Crawford's reliance upon the "domestic relations exception" is misplaced. In Ankenbrandt v. Richards, 504 U.S. 689, 701-04 (1992), the Supreme Court reaffirmed the validity of the "domestic relations exception" in diversity cases, but specifically limited application of that exception to divorce and alimony decrees and child custody orders. That exception is irrelevant to federal prosecutions under the CSRA because the district courts' jurisdiction in such cases does not rest upon diversity, but rather is based upon 18 U.S.C. § 3231 ("The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the

laws of the United States."). Furthermore, the policies underlying the domestic relations exception do not support abstention in CSRA prosecutions because, as noted above, the CSRA is designed to enhance enforcement of state laws and decrees. "Respect for the competency of the states in matters of domestic relations is not disparaged but manifested when the states are confronted with interstate impediments to the fulfillment of domestic duties that the courts of the states have imposed, and the states find themselves, if not helpless, at least gravely impaired in pursuing the delinquent debts." Mussari, 95 F.3d at 791. Similarly, contrary to Crawford's argument based upon the Younger abstention doctrine, we discern no interference with the states' abilities to apply and enforce their criminal laws. "[T]he CSRA does not displace any approach taken by the state in addressing the problem of delinquent parents but rather supplements such state initiatives by fortifying law enforcement efforts and existing state penalties." Hampshire, 95 F.3d at 1004. In sum, the district court correctly rejected Crawford's argument that principles of federalism and comity compel abstention. Accord Johnson., 1997 WL 283447, at *3-5 (rejecting substantially the same arguments). We therefore hold that the district court appropriately declined to abstain.

Ex post facto clause

In the present case, the Texas state court initially ordered Crawford to make monthly child support payments in March

1988. Thereafter, Crawford made some payments, but stopped in November 1988. The final divorce decree, confirming his monthly support obligation, was entered in the Texas state court in November 1990. The CSRA became effective October 25, 1992. Crawford was indicted on February 15, 1996, on one count of violating the CSRA from October 31, 1992, through February 14, 1996. At sentencing, he was ordered to pay restitution covering the full amount of child support owed, including amounts that were due prior to the effective date of the CSRA. In light of this history, Crawford advances two arguments to challenge his conviction and sentence as violations of the ex post facto clause, U.S. Const. art. I, § 9, cl. 3. First, he argues that the CSRA may only be used to enforce judicial decrees rendered after October 25, 1992, the effective date of the CSRA, and therefore the district court erred in denying his motion to dismiss the indictment on that basis. Second, and alternatively, he contends that the restitution order imposed at sentencing violates the ex post facto clause insofar as it includes amounts that came due prior to the effective date of the CSRA. We reject both arguments.

Upon de novo review,[9] we hold that the ex post facto clause does not invalidate the government's prosecution of Crawford,

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[9]See United States v. Hampshire, 95F.3d 999, 1005 (10th Cir. 1996, cert. Denied, 117 S. Ct. 753 (1997) ("[t]he defendant's ex post facto challenge presents a question of law that we review de novo").

even though the CSRA went into effect after Crawford was ordered by the Texas state court to pay child support. The CSRA imposes punishment for the willful failure to pay a past due child support obligation with respect to a child residing in another state.

> The ex post facto prohibition forbids the Congress and the states to enact any law "which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed." Through this prohibition, the Framers sought to assure that legislative Acts give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed.

Weaver v. Graham, 450 U.S. 24, 28 (1981) (footnote and citations omitted). Clearly, the CSRA, on its face, does not violate the ex post facto clause insofar as it imposes punishment upon a person who, after October 25, 1992, willfully fails to pay a past due child support obligation. In the present case, the government alleged, and the district court found beyond a reasonable doubt, that Crawford willfully failed to pay past due child support obligations during the time frame charged in the indictment, which post-dated the effective date of the statute. The CSRA gave Crawford fair warning of its effect should he not pay past due child support obligations after its effective date, and

yet he chose not to pay. Consequently, Crawford's prosecution does not violate the ex post facto clause because he was punished in accordance with the law as it existed at the time of his offense. See, e.g., United States v. Allen, 886 F.2d 1431,146 (8th Cir.1989) ("So long as the actual crime for which a defendant is being sentenced occurred after the effective date of the new statute, there is no ex post facto violation.").

We also reject Crawford's alternative challenge to the district court's restitution order, which included in its calculations monthly obligations that accrued before the effective date of the CSRA.[10] " Upon de novo review, we agree with the Tenth Circuit's

conclusion that this argument is legally foreclosed because restitution is not "punishment" within the meaning of the ex post facto clause. Hampshire, 95 F.3d at 1006 (restitution order under CSRA does not implicate the ex post facto clause because it does not inflict punishment but rather seeks to compensate the child for the parent's failure to pay past due support obligations). In any event, the CSRA provides "[u]pon a conviction under this section, the court shall order restitution ... in an amount equal to

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[10]We have examined the trial transcript and conclude, contrary to Crawford's assertion, that the government did not "basically stipulate []" that the district court "[could] not go behind the date of the statute, namely: October 25, 1992 . . . for purposes of ordering restitution." Brief for Appellant at 34 (citing Trial Transcript, at 11, lines 13-19; 31-35).

the past due support obligation as it exists at the time of sentencing." 18 U.S.C. § 228(c) (emphasis added). [11]"Therefore, even if we were to assume that the restitution order is punishment within the meaning of the ex post facto clause, Crawford is not being punished for acts that were innocent at the time they were committed, as discussed above, nor is the punishment greater than that which was authorized at the time the offense occurred. The CSRA gives fair warning that the district court shall order restitution in the full amount due at the time of sentencing. No ex post facto violation has occurred. Accord Hampshire, 95 F.3d at 1006 ("even if we consider restitution to be punishment, there is no ex post facto problem"). In sum, upon consideration of Crawford's ex post facto arguments, we hold that the district court did not err in denying Crawford's motion to dismiss the indictment or in ordering him to pay full restitution.

Venue

Crawford also argues that the district court erred in failing to dismiss the indictment on grounds of improper venue.[12] No

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[11]The definition of "past due support obligation" is separately defined in 18 U.S.C. § 228(d)(1).

[12]Crawford describes this issue as "whether the district court erred in finding that the United States District Court for the

federal court of appeals has addressed the issue of whether, in a CSRA case, venue is proper in a district with which the defendant has no connection other than the fact that the child, with respect to whom the defendant owes support, resides there. The only reported case directly addressing such a venue challenge is Murphy v. United States, 934 F. Supp. 736 (W.D. Va. 1996) (Murphy).[13] In Murphy, the District Court for the

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Eastern District of Missouri was the proper jurisdiction and/or venue over the person of [Crawford]." Brief for Appellant at 34. However, we confine our discussion tot he issue of venue only, as Crawford has not raised an issue of jurisdiction. The statute to which Crawford refers in his brief, 18 U.S.C. § 3237, is a venue statute. Moreover, to the extent that his arguments are also based upon the Constitution and Fed. R. Crim. P. 18, he is asserting a venue challenge, not a jurisdictional challenge. See, e.g., United States v. Meade, 110 F.3d 190,200 (1st Cir. 1997) (The Constitution and Rule 18 protect a criminal defendant's venue -- not jurisdictional -- rights. . . .[T]he constitutional and statutory venue provisions are not restrictions on the court's jurisdiction.")

[13]The facts in Murphy v. United States, 934 F. Supp. 736, 737-38 (W.D. Va. 1996), were as follows. The defendant and his wife had married in Oklahoma. They lived together in Oklahoma where they had a daughter and then subsequently divorced. In the final divorce decree issued by an Oklahoma state court, the defendant was ordered to make child support payments to the Oklahoma state court. Following the divorce, the defendant's former wife and child moved to Virginia, and the defendant moved to Texas and, later, to Florida. After the defendant's first move to Texas, the child support order was transferred from Oklahoma to Texas pursuant to those states' reciprocity provisions. Accordingly, the defendant was thereafter under orders to make child support payments to the Texas Attorney General. After he moved from Texas to Florida, he was indicted

Western District of Virginia reviewed a judgment of conviction under the CSRA which had been entered by a magistrate judge,[14] and vacated the judgment on grounds of improper venue. The district court in Murphy reasoned "[t]he operative verb phrase in the statute is 'willfully fails to pay,'" and therefore the proper place for venue is where the defendant is required to make his or her payments, not the victim's location. 934 F. Supp. at 739. The district court in Murphy also opined "the legislative history [of the CSRA] suggests that the statute was aimed at parents who moved out of state to avoid making support payments." Id. at 740. Thus, the district court concluded, "[t]o affix venue in any jurisdiction where the child happens to be present when support payments are not made would contravene the historic policy considerations of the statutory and constitutional venue provisions. Venue cannot be that unpredictable. " Id.[15]

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in Virginia, where his former wife and child were living. At that time, he was still required to make payments to the Texas Attorney General even though he was living in Florida. The defendant was tried and found guilty by a United States magistrate judge in the Western District of Virginia, whereupon he appealed to the district court in the Western District of Virginia.

[14]United States v. Murphy 893F. Supp. 614 (W.D. Va. 1995), vacated, 934 F. Supp. 736 (W.D. Va. 1996).

[15]At this time, a decision on appeal in Murphy has not been filed by the Fourth Circuit. In United States v. Johnson, No. 96-4323,

By contrast, in the present case, the magistrate judge concluded that venue was proper in the Eastern District of Missouri because the children, the victims of the offense, reside in that district. The magistrate judge noted that, under federal statutory law, "'[e]xcept as otherwise expressly provided by enactment of Congress, any offense against the United States begun 'in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued or completed.'" United States v. Crawford, slip op. at 13 (Apr. 26, 1996) (quoting 18 U.S.C. § 3237). The magistrate judge also noted, as a general rule, that courts are to determine the "locus delicti" from the nature of the crime alleged and the location of the acts constituting it. Id. (quoting Travis v. United States, 364 U.S. 631, 635 (1961) (Travis)). The magistrate judge then reasoned: "[t]he venue requirement is as to the location of the offense and not the 'personal presence' of the defendant . . . . [V]enue in the instant case is proper in the Eastern District of Missouri." Id. at 14 (citation omitted).

Crawford argues on appeal that his venue rights have been violated because he has not begun, continued, or completed any offense in the Eastern District of Missouri, as all of his relevant acts (or omissions, as the case may be) occurred in Texas or Louisiana. He highlights the undisputed facts that: at all relevant times, he had no contacts with the state of Missouri; the court

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1997 WL 283447 (4th Cir. May 30, 1997) (Johnson), the Fourth Circuit affirmed a conviction under the CSRA on grounds that the CSRA does not violate the commerce clause or the Tenth Amendment; however, venue was not at issue in Johnson.

order setting forth his child support obligation was entered by the state court in Texas; and he was specifically ordered by the Texas state court to make monthly child support payments "through the Dallas County Child Support Office" in Dallas, Texas. He argues that Travis is distinguishable from the present case because the Supreme Court held in Travis that, insofar as the defendant, a union officer, was being prosecuted for filing false affidavits with the National Labor Relations Board, venue was proper only in the District of Columbia; however, the affidavits were required by law to be on file in the District of Columbia. 364 U.S. at 635-37. By contrast, in the present case, Crawford argues, the Texas state court had ordered him to make his payments in Texas. Thus, he concludes, venue is improper in the Eastern District of Missouri, and the district court erred in denying his motion to dismiss the indictment on that basis.

In response, the government observes "[v]enue for a crime is not limited to one district, and may be found even where the defendant is not present . . . . [V]enue properly lies in any district that satisfies either the 'active verb' test or the 'nature and effects' test." Brief for Appellee at 28 (citations omitted). Acknowledging Murphy's contrary outcome, the government maintains that Murphy was wrongly decided. The government argues that the analysis in Murphy is flawed because the district court failed to take into account the continuing nature of a CSRA offense. The government argues that the CSRA's language as a whole, including the words "with respect to a child who resides in another state," contemplates not only the defendant's failure to pay at a particular location, but also the unfulfilled promise or expectation experienced by the child with respect to whom the

payment was to be made. On this basis, the government contends that the magistrate judge correctly concluded that the unfulfilled expectation which Crawford's children experienced in Missouri was part of a continuing offense within the meaning of 18 U.S.C. § 3237(a). We agree.

A criminal defendant's venue rights are protected by Article III, § 2, and the Sixth Amendment, of the Constitution. Both of these constitutional provisions require that a defendant's trial take place where "the crime shall have been committed." Similarly, Rule 18 of the Federal Rules of Criminal Procedure states "[e]xcept as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed." However, as to the determination of where a crime was committed for venue purposes, the United States Code provides:

> Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

18 U.S.C. § 3237(a).

The issue of whether Crawford's constitutional and statutory rights have been violated as a result of venue being based upon the place of his children's residence is a question of law which we review de novo. Upon de novo review, we hold that

Crawford's venue rights have not been violated. We disagree with the reasoning and conclusion in Murphy because, in our opinion, the CSRA describes a continuing offense which may be prosecuted where the parent-defendant resides, where the parent-defendant is required to make payments, or where the child-victim resides. Applying the "active verb" or "key verb" test, we first note that the key verb phrase in 18 U.S.C. § 228(a) is "fails to pay" and, to the extent that a failure to do something can occur in a particular place, it need not necessarily occur in only one place. Accord United States v. Angotti, 105 F.3d 539, 543 (9th Cir. 1997) (Angotti) ("[w]e reject [the defendant's] argument, for it erroneously assumes that a key verb can describe conduct occurring in only one venue").

Although the Ninth Circuit's decision in Angotti did not concern a prosecution under the CSRA, its reasoning on the venue issue is highly instructive in the present case. In Angotti, the defendant had been prosecuted and convicted in the Central District of California on six counts, including two counts of making false statements to a federally-insured financial institution in an application for a $480,000 bank loan, which he used to purchase a condominium unit in Northern California. Id. at 541. The defendant had submitted the original loan application to an innocent middle agent, a mortgage company located in the Northern District of California, which in turn restated the false information (not knowing it to be false) to a savings and loan association's local branch office also located in the Northern District of California. Id. However, after the local branch office conditionally approved the application, it sent the application to its company headquarters, located in the Central District of

California, for a final decision. Id. The defendant in Angotti challenged venue on the corresponding false statement counts (among others). As in the present case, the substantive criminal statute "d[id] not indicate a method for determining the location of the crime for the purpose of establishing venue." Id. at 542. The Ninth Circuit reasoned that the false statement counts were properly prosecuted in the Central District of California because the defendant's false statements, as originally set forth in the loan application, each constituted a continuing offense that could be prosecuted where the crime was begun, continued, or completed. Id. (citing 18 U.S.C. § 3237(a)). The Ninth Circuit noted that the defendant's false statements were "made for the purpose of influencing the bank official who had the power to approve his loan." Id. at 543. "His act of 'making' the false statements continued until the statements were received by the person whom they were ultimately intended to influence." Id. It is "irrelevant," the Ninth Circuit commented, that the defendant subjectively may not have known the identity or location of the person whom the defendant ultimately intended to influence. Id. The Ninth Circuit further explained:

> There is no question that a crime was committed once [the defendant's] statements reached the bank office in the Northern District; the statement did not have to reach their intended destination in order to constitute a crime. But the documents did reach the Central District . . . . [E]ven though a crime may have been completed earlier, "it does not follow that the crime then terminated, and that what

> transpired [in the district where officials acted upon the false statement] was irrelevant for venue purposes."

Id. (citations omitted). In response to the dissent's observation that "a result of this analysis is that venue will often be possible in districts with which the defendant had no personal connection, and which may occasionally be distant from where the defendant originated the actions constituting the offense," the majority opined that the appropriate remedy is not to restrict venue but, rather, to permit easy transfer. Id. at 543-44.

Similarly, Crawford's crime under the CSRA of failing to pay past due child support obligations constituted a continuing offense which could have been prosecuted where the crime was begun, continued, or completed. For obvious reasons, it is difficult to conceptualize or to describe the place where a crime was begun, continued, or completed when the crime itself was an omission or failure to act. Nevertheless, if the crime of failing to pay child support obligations occurs anywhere, it is fair to say that it occurs where there is an absence of the required payment. Thus, the crime occurs not only at the place where the payment was to be deposited, but also the place where it was ultimately to be received by the would-be intended recipient. Thus, in the present case, even though Crawford has had no personal contacts with the Eastern District of Missouri, venue was proper in that district because that is the place of residence of the children and custodial parent to whom he owes support -- the place where the money would have been received by the intended recipients.

Moreover, to the extent that the "nature and effects" test may be more appropriate for evaluating venue issues under the CSRA, our holding today comports with that standard as well. See Angotti, 105 F.3d at 544 (key verb test is not the exclusive test for determining venue) (citing cases). The CSRA expressly criminalizes the willful failure to make support payments "with respect to a child who resides in another State." 18 U.S.C. § 228(a). Because the CSRA, by definition, presupposes that the defendant and the child reside in different states, the residence of the child clearly contributes to the nature of the crime. Moreover, the place where the child resides is the place where there is the greatest effect on the victim of the crime, and it is one of the places where interstate commerce is affected. Cf. United States v. Brimberry, 779 F.2d 1339, 1343 (8th Cir. 1985) (venue for bankruptcy fraud prosecution is proper in district where the bankruptcy proceeding was held and the fraud had its impact, even though the defendant's fraudulent acts occurred elsewhere). Therefore, we hold that the district court did not err in denying Crawford's motion to dismiss the indictment on the ground that venue was improper in the Eastern District of Missouri.[16]

Sufficiency of the evidence

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[16]As a separate matter, insofar as Crawford may have been inconvenienced by this choice of venue, his remedy was to seek a transfer, which he specifically chose not to do when he voluntarily dismissed his motion for a transfer to the Western District of Louisiana.

Finally, Crawford appeals his conviction on the ground that the evidence was insufficient to support the inference that he acted willfully in failing to make his child support payments. Under our well-established standard for reviewing claims of insufficiency of the evidence, we view the evidence in the light most favorable to the government, giving the government the benefit of all reasonable inferences; we may overturn the verdict only if the evidence is such that a reasonable-minded factfinder must have entertained reasonable doubt as to the government's proof of an essential element of the offense. United States v. Johnson, 18 F.3d 641, 645-46 (8th Cir. 1994) (upholding a conviction upon a trial by the court). In the present case, the evidence showed that Crawford knew he had children and knew he was required to make support payments on their behalf pursuant to the Texas state court's orders. Moreover, the government demonstrated at trial that Crawford earned over $230,000 during the relevant time period. There was ample evidence to support the inference that Crawford voluntarily and intentionally violated a known legal duty to pay past due child support. The evidence was therefore legally sufficient to permit a reasonable trier of fact to conclude beyond a reasonable doubt that the government had proved willfulness. See Cheek v. United States, 498 U.S. 192, 200 (1991) (standard for statutory willfulness is voluntary, intentional violation of a known legal duty). Accordingly, we reject Crawford's sufficiency of the evidence argument.

Conclusion

For the foregoing reasons, the judgment of the district court is affirmed

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

United States District Court USCA8 No.

For the District of

Eastern District of Missouri

Notice of Appeal

/s/ bh

FILED

JUL 2 1996

U.S. District Court
E. District of MO.

United States of America

Plaintiff,

vs.

Lynn Truman Crawford

Defendant

No. 4:96CR00042 GFG
District Court Docket Number

/s/ Judge G.F. Gunn
District Court Judge

Notice is hereby given that Lynn Truman Crawford appeals to the United States Court of Appeals for the Eight Circuit from the X Judgment & Commitment __ Order Conviction & Sentence entered in this action on July 2, 1996.

/s/ T. Taylor Townsend
Signature of Defendant's Counsel

T.Taylor Townsend
Typed Name of
Defendant's Counsel

137 St. Denis
Street Address Room Number

(318) 352-2353
Telephone Number

Natchitoches LA 71457
City State Zip

July 2, 1996
Date

Transcript Order Form

To Be Completed by Attorney for Appellant

x Please Prepare a transcript of:
- x Pre-trial proceedings
- x Testimony or
- _ Portions thereof
- x Sentencing
- _ Post Trial Proceedings
- _ Other (Specify)

__ I am not ordering a Transcript because:
- __ Previously Filed
- __ Other (Specify)

CERTIFICATE OF COMPLIANCE

Appellant hereby certified that copies of this notice of appeal/transcript order form have been filed/served upon U.S. district Court, court reporter, and all counsel of record and that satisfactory arrangements for payment of cost of transcripts ordered have been made with the court reporter. (FRAP 10(b). Method of payment __ Funds, __ CIA Form 24 completed and attached.

Attorney's Signature /s/ T. Taylor Townsend Date July 2, 1996

Note: Complete All Items on Reverse Side

INFORMATION SHEET

TO BE COMPLETED BY ATTORNEY FOR APPELLANT

1. Defendant's Address: Custody of Bureau of Prisons
2. Date of Verdict: July 2, 1996 Jury __ Non-Jury X

Offenses: 18 § 228 Failure to Pay Child Support

Trial Testimony-Number of Days 1 Bail Status Bail Denied

3. Sentence and Date Imposed: 6 months incarceration and restitution in the amount of $91,547.14

4. Appealing: Sentence __ Conviction __ Both X

Challenging: __ Application of Sentencing Guidelines

__ Constitutionality of Guidelines

__ Both Application and Constitutionality

5. Date of Trial Transcript ordered by Counsel or District Court: July 2, 1996.

Stenographer in Charge: Lynne Shrum

(Name, Address, Phone) 1114 Market St. St. Louis Mo. (314) 231-2486

6. Trial Counsel Was: __ Appointed X Retained

Does Defendant's financial status warrant appointment of counsel on appeal?

__ Yes X No

Affidavit of Financial Status filed: _____

Is there any reason why trial counsel should not be appointed as counsel on appeal?

X Yes __ No

7. Assistant U.S. Attorney Name Richard L. Poehling

Phone Number: (314) 539-2200

_____

Court Reporter Acknowledgment

_____

_____ _____ _____

Date Order Received	Estimated Completion Date	Est. Number of Pages

Court Reporter's Signature

Date

A0 245B (3/95) Sheet 1-Judgment in a Criminal Case

EASTERN District of Missouri

FILED
JUL -2, 1996
U.S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

UNITED STATES OF AMERICA

V.

LYNN TRUMAN CRAWFORD

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 4:96CR42GFG

T. Taylor Townsend, Retained
Defendant's Attorney

THE DEFENDANT:

__ pleaded guilty to court(s) _____

__ pleaded nolo contendere to court(s) _____
Which was accepted by the court.

X was found guilty on count(s) 1 of indictment
After a plea of not guilty

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18:228	Failure to pay Child Support	10/92-2/14/96	1

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

__ The defendant has been found guilty on court(s)

_____

__ Court(s) _____(is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid:

Defendant's Soc. Sec. No_____

Defendant's Date of Birth: _____

Defendant's USM No.: _____

July 2, 1996
Date of Imposition Judgment

/s/ George F. Gunn, Jr.
Signature of Judicial Officer

Defendant's Residence Address:

_____
_____
_____

George F. Gunn, Jr.
U.S. District Judge
Name & Title of Judicial Officer

Defendant's Mailing Address:

_____
_____
_____

July 2, 1996
Date

A true copy of the original Filed 7-2-96
Attest: Robert St.Vrain, Clerk
By: B. Kramer
Dated: 7-2-96

A0 245B(3/95) Sheet 2 - Imprisonment

DEFENDANT: LYNN TRUMAN CRAWFORD
CASE NUMBER: 4:96CR42GFG

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of SIX 6 MONTHS.

__ The court makes the following recommendations to the Bureau of Prisons:

X The defendant is remanded to the custody of the United States Marshal.

__ The defendant shall surrender to the United States Marshal for this district:

__ at _____a.m./p.m. on _____.

__ as notified by the United States Marshal.

__ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

__ before 2 p.m. on _____.

__ as notified by the United States Marshal.

__ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at

_____, with a certified copy of this judgment.

_____
United States Marshal
By_____
Deputy U.S. Marshal

A0 245B (3/95) Sheet 5, Part A-Criminal Monetary Penalties

Judgment Page 3 of 4

DEFENDANT: LYNN TRUMAN CRAWFORD
CASE NUMBER: 4:96CR42GFG

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

Count	Assessment	Fine	Restitution
1	$25.00		$91,547.14

__ If applicable, restitution amount ordered pursuant to plea agreement ..... $_____

Totals	$ 25.00	$_____	$91,547.14

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $_____.

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(g).

__ The court has determined that the defendant does not have

the ability to pay interest and it is ordered that:

__ The interest requirement is waived.

__ The interest requirement is modified as follows:

X The defendant shall pay a post-judgment interest rate of 5.89% compounded annually.

RESTITUTION

__ The determination of restitution is deferred in a case brought under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after 09/13/1994, until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

X The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order of percentage payment column below.

Name of Payee	Total Amount of Loss	Amount of restitution Ordered	Priority Order or Percentage of Payment
Mona Eileen Tague (for the benefit of Jennifer Nicole Crawford and Valerie Callan Crawford)		$91,547.14	

Totals: $91,547.14

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994.

A0 245B (3/95) Sheet 5, Part B-Criminal Monetary Penalties

Judgment Page 4 of 4
DEFENDANT: LYNN TRUMAN CRAWFORD
CASE NUMBER: 4:96CR42GFG

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A X in full immediately; or as to special assessment

B __ $_____immediately, balance due (in accordance with C, D, or E); or

C __ not later than _____; or

D __ in installments to commence _____ days after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the

commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E __ in _____ (e.g., equal, weekly monthly, quarterly) installments of $ _____ over a period of ____ year(s) to commence ____ days after the date of this judgment.

The National Fine Center will credit the defendant for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

Restitution to be paid within 5 years from release from incarceration.

__ The defendant shall pay the costs of prosecution

__ The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States Courts National Fine Center, Administrative Office of the United States

Courts, Washington, DC 20544, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. If the National Fine Center is not operating in this district, all criminal monetary penalty payments are to made as directed by the court, the probation officer, or the United States attorney.